



Eshet Achiv She'lo Hayah Be'Olam

In general, it is forbidden for a man to marry a woman who was married to his brother. The exception is in the context of *yibum*; where the brother passed away without having any children. He must either perform *yibum* thereby marrying her – the *yavama* – or *chalitzah* is performed through which she is permitted to marry someone else. The *masechet* begins by teaching that this is true unless the *yavama* is already forbidden to him due to another familial relationship. One example is if the widow is his daughter. The *Mishnah* explains that even if the deceased man had two wives and only one of them was a forbidden relationship, the other wife, the *tzara*, would also not require *yibum* or *chalitzah*.

One of the forbidden relationships listed is an *eshet achiv she'lo hayah be'olamo*. The second *perak* opens by explaining the case. One way is if there were a number of brothers, but one was born after the husband died and before *yibum* was performed. The brother born after the death is defined as *eshet achiv she'lo hayah be'olamo* and is forbidden to perform *yibum*. The *Bartenura* (1:1) explains that the *Torah* excluded this case from the *mitzvah* of *yibum*. When the *Torah* teaches the *mitzvah*, it begins, “when two brothers ‘dwell’ together...” (*Devarim* 25:5). The *Gemara* (17b) explains that they must be dwelling in the world, i.e. alive at the same time, for the *mitzvah* to apply. Consequently, once the young brother is born, for him, the *yavama* is if considered as if they had children. In other words, the permit of *yibum* does not apply and the regular prohibition of marrying one's brother's wife is in place.

The second case, which is the subject of debate, is where the young brother was born after the older brother performed *yibum*. After the young brother was born, the older brother then died. The *Chachamim* understand that this is also defined as *eshet achiv she'lo hayah be'olamo* where as *R' Shimon* disagrees. How do we understand this debate?

According to the *Chachamim* this case is no different. The widow is the first brother's wife that we never permitted to him through *yibum*, because he was born only after the first brother died. According to *R' Shimon* however, the fact that *yibum* was performed before the young brother was born makes a difference. Why?

The *Bartenura* explains that since *yibum* was already performed, it means the *zika* from the first brother, the connection that obligates *yibum*, is no longer present. The expression the *Gemara* (20a) uses is that when he was born, he found that *yavama* in a state of *heter* and not in a state of *issur*.

Rashi (20a) explains that the second brother was permitted to the *yavama* due to the *mitzvah* of *yibum*. For him, the prohibition of *eshet achiv* did not apply. When the second brother dies, the younger brother, is able to perform *yibum* by way of the *heter* that the second brother employed. The *Kovet Ha'arot* (4:14) explains that *yibum* is different from marriage. In *yibum* the *ishut* (marriage) is transferred from the late husband to the brother, including the *issurim* and *heterim* associated with that *kinyan*. Consequently, in this case, the *heter* would be transferred to the third brother also.

The *Tosfot* (20a, s.v. *hai*) however explain that when the second brother performed *yibum*, the prohibition of *eshet achiv*, was completely removed. The proof is that if the second brother divorced her, he would be able to remarry here. That begins the case, the prohibition is removed from everyone, and the third brother would be able to perform *yibum* after the second brother dies.

Considering both *Rashi* and *Tosfot*, why does *R' Shimon* agree that if the third brother was born prior to the second brother performing *yibum*, if the second brother dies, he is not able to perform *yibum*? The logic, that the third brother can use the *heter* of his brother should apply?

Rashi (18b, s.v. *beheteira*) explains that when the brother is born after *yibum*, *yibum* is permitted since “there was not a moment when she was *assur*”. This implies that if he was born prior to *yibum*, since at the time of the *zika* she was *assur*, that *issur* remains, even if the second brother performs *yibum*. In other words, we are not just dealing with the prohibition of marrying one's brother's wife and whether in the context of *yibum* it is alleviated. If the brother is born, while she is a *shomeret yavam* since in this instance (*nefillah*) she is *assur* to him, an additional *issur* now exists directly between them, that cannot be circumvented by trying to use the *heter* of the second brother (see *Rashi*, 9b).

Revision Questions

חגיגה ג' ה'ח'

- What is the geographical border beyond which we no longer trust the sellers of earthenware about the purity of their wares? (ג' ה')
- Do we trust a thief, which returned what he stole, when he assures us that he did not touch anything else in the house? (ג' ה')
- What assumption do we make regarding *tum'ah ve'tahara* during the festivals? (ג' ה')
- In what case do they debate whether this assumption carries over till after the festival? (ג' ה')
- Which of the utensils was unable to be taken to the *mikvah* and thus required extra precaution with respect to *tum'ah ve'tahara*? (ג' ה')
- Which two utensils in the *Beit Ha'Mikdash* do not require *tevilah* and why? (ג' ה')

יבמות א' – ב' ו'

- What are the fifteen relatives that are exempt from *yibum*? (א' א')
- What is a *tzarah* and when are they also exempt for *yibum*? (Careful) (א' א')
- Provide an example of how a *tzarah* of a *tzarah* can also be exempt from *yibum*. (א' ב')
- Provide an example of how one of the *tzarot* of one of the relatives in the first *Mishnah* could indeed be obligated for *yibum*. (א' ב')
- What are the six relationships forbidden to both brothers? (ג' א')
- Can one marry a *tzarah* of one of these relatives? (ג' א')
- Who argues with the principle brought in the first *Mishnah* and what does he argue? (ד' א')
- List two implications of this dispute. (ד' א')
- What are the cases brought of “*eshet achiv shlo haya b'olamo*”? (ב' א'-ב')
- Who argues on the second case and why? (ב' ב')
- What is the law regarding the two sisters that married two brothers, and then the both brothers passed away, with respect to the third remaining brother? (ב' ב')
- What is the exception to the answer to the previous question? (ב' ג')
- What is an *issur mitzvah*? (ד' ב')
- What is an *issur kedushah*? (ד' ב')
- What is the law regarding *yibum* for a relationship defined as an *issur mitzvah* or *issur kedushah*? (ג' ב')
- Is a brother that is a *mamzer* required to perform *yibum*? (ה' ב')
- What should one do if he married one of two sisters, but is unsure who he married? (ב' ו')
- Regarding the previous question, what should his brother do if this person then dies (without any children)? (ב' ו')
- Regarding the previous question, is the law different if he has more than one brother? (ב' ו')

Shiurim

ONLINE SHIURIM

Yisrael Bankier
mishnahyomit.com/shiurim

Rabbi Reuven Spolter
mishnah.co

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rabbi E. Kornfeld
Rabbi C. Brown
http://www.dafyomi.co.il/calendars/myomi/myomi-thisweek.htm

APPS

Mishnah Yomit
mishnahyomit.com

All Mishnah
Orthodox Union

Mishna Yomi
Our Somayach, South Africa

Kehati

**SHIUR
ON KOL HALOSHON**

Rabbi Moshe Meir Weiss
In US dial: 718 906 6400
Then select: 1 – 2 – 4

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
29 October י"ד חשוון	30 October ט"ו חשוון	31 October ט"ז חשוון	1 November י"ז חשוון	2 November י"ח חשוון	3 November י"ט חשוון	4 November כ' חשוון
Yevamot 2:7-8	Yevamot 2:9-10	Yevamot 3:1-2	Yevamot 3:3-4	Yevamot 3:5-6	Yevamot 3:7-8	Yevamot 3:9-10

